

FILED

NOT FOR PUBLICATION

MAY 18 2015

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MONIQUE MANCHOUCK, as an
individual, and on behalf of all others
similarly situated,

Plaintiff - Appellant,

v.

MONDELEZ INTERNATIONAL, INC.,
an Illinois corporation, DBA Nabisco,

Defendant - Appellee.

No. 13-17029

D.C. No. 3:13-cv-02148-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted May 14, 2015**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: O'SCANNLAIN and IKUTA, Circuit Judges and BURNS, *** District Judge.

Monique Manchouck appeals the district court's dismissal of her class action suit against Mondelez International, Inc., dba Nabisco (Nabisco) with prejudice. She alleges only that the district court abused its discretion in denying leave to amend; she does not challenge its dismissal of her complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We decline to consider Manchouck's new proposal for amending her complaint to cure its defects, because she failed to first present the proposed amendment to the district court either in opposition to a motion to dismiss or in a motion for reconsideration under Rules 59(e) or 60(b) of the Federal Rules of Civil Procedure. *See Vincent v. Trend W. Technical Corp.*, 828 F.2d 563, 570 (9th Cir. 1987). Moreover, even if we considered Manchouck's proposed amendment, it does no more than restate an allegation in paragraph 22 of the First Amended Complaint. Manchouck raises the additional argument that other Newtons products list fruits rather than fruit purees as ingredients, but fails to explain the legal significance of this fact. Accordingly, the district court did not err in concluding

*** The Honorable Larry A. Burns, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

that any further amendment would be futile. *See DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 188 (9th Cir. 1987).

AFFIRMED.